

REMARKS

The present amendment is in response to the Office Action dated November 30, 2006 and in response to the Advisory Action dated February 5, 2007. Claims 1-11, and 13-28 are now present in this case. Claims 1 and 10 are amended.

Claims 1-11 and 13-28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 5,999,532 to Terasaki combined with newly cited U.S. Patent No. U.S. Patent No. 6,055,239 to Kato. The applicants respectfully traverse this rejection and request reconsideration.

The applicants filed an amendment in the present application on September 15, 2006. The amendment was based in part on a telephone interview with the Examiner on September 8, 2006. As discussed in that telephone conference, and noted in the amendment, the system disclosed in Terasaki requires both a PVC connection and SVC connection. This is noted in Figures 4-5 of Terasaki and discussed at column 6, line 50-column 7, line 52. As described in Terasaki, a PVC connection is established for signaling purposes, such as call setup and call processing. (See column 6, lines 50-56). The system subsequently establishes an SVC connection for data transfer. (See column 6, lines 59-63.) Thus, Terasaki requires both a PVC and an SVC connection. As such, the applicants believe that Terasaki cannot teach or suggest “connecting the client machine to the server machine using either the PVC connection or the SVC connection based upon the response message,” as recited in, by way of example, claim 1.

Based on the Advisory Action, it appears that Terasaki is interpreted as meeting the language of, by way of example, claim 1, because some communications in Terasaki occur over a PVC connection while other communications in Terasaki occur over the SVC connection. Claim 1 has been further amended to clarify that the connection between the client machine and the server machine is made “using either only the PVC connection or only the SVC connection.” (Emphasis added.) As previously discussed, Terasaki requires both connections and thus teaches away from the method recited in claim 1.

The Office Action further states that Kato discloses a separate method of establishing PVC and SVC connections and querying for the availability of PVC and SVC connections. This is incorrect. As the title indicates, Kato is directed to a technique for establishing a PVC connection in an ATM network. The Advisory Action asserts that Kato refers to SVC connections. However, Kato defines an SVC connection as a “selection virtual connection.” (See column 2, lines 37-38.) It is unclear that a selection virtual connection is the same as a “switched virtual connection” described in the specification of the pending application and recited in the claims as there is no description in Kato of a switched virtual connection. In contrast, the description of Figure 4 in Kato clearly states that the selection virtual connection is established between a network monitor 24 and each of the exchanges 20-23. Importantly, it is noted that there is no connection labeled an SVC connection between the subscriber A and a subscriber B. Thus, it is believed that the term SVC in Kato does not refer to a switched virtual connection between subscriber machines as described in the pending application and recited in the pending claims. The unfortunate use of similar initials may have caused some confusion. However, it is clear that Kato does not teach or suggest determining the availability of switched virtual connections between client and server machines. Furthermore, Kato does not teach or suggest establishing a communication link between a client and a server using only the PVC connection or only the SVC connection as recited in claim 1. The combination of references does not suggest the method of claim 1. For at least this reason, claim 1 is clearly allowable over the combination of Terasaki and Kato. Claims 2-6 are also allowable in view of the fact that they depend from claim 1, and further in view of the recitation in each of those claims.

Claim 10 is an apparatus claim and recites *inter alia* “connection means receiving the connection response and connecting the client application to the server machine using either only the PVC connection or only the SVC connection based upon the connection response.” As discussed above with respect the claim 1, Terasaki and Kato, taken alone or in combination, do not suggest such connection means. Terasaki requires both a PVC and an SVC connection while Kato is directed solely to a PVC connection. Accordingly, claim 10 is clearly allowable over the combination of Terasaki

and Kato. Claims 11 and 13-17 are also allowable in view of the fact that they depend from claim 10, and further in view of the recitation in each of those claims.

The advisory action asserts that the applicants argue that claim 18 is distinct from claim 1 “but fails to further address the prior art rejection beyond the arguments previously made for claim 1.” (See Advisory Action, page 2.) Approximately one half of page 9 in the previous response was devoted to distinctions between claims 1 and 18. However, approximately two-thirds of page 10 were devoted to distinctions between claim 18 and the combination of references cited in the Office Action (i.e., Terasaki and Kato). Claim 18 is also allowable over the combination of Terasaki and Kato. Terasaki describes techniques for implementing an ATM line concentration apparatus that allows ATM switching for one or more subscriber terminals. However, this does not suggest querying multiple servers regarding levels of service provided by the respective servers, storing the service indicator data, and sending the message to a client machine to indicate the availability of one or more of the plurality of servers to provide a level of service required by a client application, as recited in claim 18. The addition of Kato to the Terasaki does not solve this serious deficiency. Kato is directed to a technique for establishing a PVC connection between two machines, but does not teach or suggest receiving messages from a plurality of servers with the message containing service indicator data, storing the service indicator data, or sending a message to a client machine to indicate the availability of one or more of a plurality of servers to provide a level of service required by a client application, as recited in claim 18.

Neither reference teaches or suggests collecting data from a plurality of servers in the form of service indicator data and storing service indicator data for each of the plurality of servers. Furthermore, neither reference, taken alone or in combination, suggests sending a message to a client machine to indicate the availability of one or more of the plurality of servers to provide a level of service required by a client application. Accordingly, claim 18 is clearly allowable over the combination of Terasaki and Kato. Claims 19-22 are also allowable in view of the fact that they depend from claim 18, and further in view of the recitation in each of those claims.

The Advisory Action also asserts that the previous response included no discussion of claim 23 to distinguish the claim over the cited the cited references (i.e., Terasaki and Kato. However, page 11 of the previous response included approximately one-half page discussing exactly those distinctions. Claim 23 is clearly allowable over the combination of Terasaki and Kato. As noted above, Terasaki is directed to techniques for coupling one or more subscriber terminals via an ATM switch, but does not teach or suggest a plurality of servers or formulating a query message at a client machine and sending the query message to a plurality of servers nor receiving a response message from at least a portion of the plurality of server machines, as recited in claim 23. The addition of Kato to Terasaki does not solve this serious deficiency. Kato describes techniques for establishing a PVC connection in an ATM network between subscriber machines, but does not teach or suggest a plurality of server machines or formulating query messages for the plurality of server machines or receiving response messages from at least a portion of the plurality of server machines, as recited in claim 23. Furthermore, as discussed above, the so-called SVC in Kato is not a switched virtual connection as asserted in the Office Actions, but a selection virtual connection that appears to be part of a network monitor and control system. Kato does not teach or suggest any query message that requests “data indicative of the availability of PVC and SVC connections at each of the plurality of server machines,” as recited in claim 23. Indeed, Kato does not contemplate the use of SVC connections between client and server. The selection virtual connection control mechanism of Kato is not a communication link between clients and servers, but between the exchanges and a network monitor. Accordingly, claim 23 is clearly allowable over the combination of Terasaki and Kato. Claims 24-27 are also allowable in view of the fact that they depend from 23, and further in view of the recitation in each of those claims.

The applicants have made a good faith effort to place all claims in condition for allowance. The applicants respectfully request reconsideration of the present application and its allowance. If questions remain regarding the application, the Examiner is invited to contact the undersigned at (206) 628-7640.

Respectfully submitted,
Davis Wright Tremaine LLP

/Michael J. Donohue, Reg. #35859/

Michael J. Donohue

MJD:gatc

1501 Fourth Avenue
Suite 2600
Seattle, Washington 98101-1688
Phone: (206) 622-3150
Fax: (206) 6628-7699

1956658_1.DOC